

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPP) NO.1182 OF 2016

IN

CRIMINAL APPLICATION (BA) NO.407 OF 2015 (D)

(Tushar Nazukrao Pundhkar Vs. The State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri Anil Mardikar, Senior Advocate with Shri V. P. Bhise,
Advocate for the applicant.
Shri C. A. Lokhande, A.P.P. for the State.

CORAM : S. B. SHUKRE, J.

DATED : SEPTEMBER 22, 2016

Reply of the prosecution is taken on record.

Heard learned Senior Counsel for the applicant and
learned A.P.P. for the State.

While granting bail to this applicant on 01/9/2015,
this Court imposed a condition that the applicant shall not enter
the territorial limits of Akot city, except for attending the dates
on which the Sessions case is fixed. At that time, the charge-
sheet was recently filed. Now, a period of more than an year is
over and no charge, as informed by the learned Senior Counsel,
on receiving the instruction from the instructing learned
Counsel, has been framed so far.

The purpose of imposing a condition like the one
imposed on this applicant is to ensure that the witnesses are not
influenced in any manner. But, the purpose is not for creating
disability for the accused, who has been granted bail,
permanently. If the trial does not proceed further and there is
no progress in the trial of the case, the handicap created by such

a condition would turn into a permanent disability. If that happens, the very purpose of restoring conditional liberty to the applicant would be defeated.

There is also a question of equal treatment to be given to the applicant. This applicant, it seems, has played some sort of a lesser role than some of the co-accused, who dealt knife blows to the deceased Tejas. One such accused, Gaisunder, has been released on bail by the Sessions Court without getting imposed a similar condition.

Learned A.P.P. for the State has vehemently opposed this application contending that this applicant has misused the liberty given to him by breach of the condition in respect of which an objection has now been raised by the applicant. He submits, on instructions given to him by the Investigating Officer, that this applicant has misused the condition on as many as 32 occasions and this is based upon the Call Details Record of the mobile number, which, according to the Investigating Officer, has been stated by the applicant himself, though belonging to his friend, Mohd. Kalim Abdul Hakim, is under his active use.

I have gone through the case-diary, which contains the statement of the applicant made in respect of this mobile number. Nowhere in the statement, the applicant has informed the Investigating Officer that this mobile, bearing number 8055804141, is being used by him. It only says that the applicant has informed the Investigating Officer that this mobile number belongs to one Mohd. Kalim Abdul Hakim. It appears that incorrect information has been given by the Investigating Officer to the learned A.P.P. for the reasons best known to the

Investigating Officer. I would only say that such conduct of the Investigating Officer, who is personally present in the Court, is not appreciated. This only shows that what has been stated as the main ground of opposition by the prosecution itself is not in existence.

In the circumstances, I am of the view that this application deserves to be allowed and it is allowed accordingly.

The condition No.(iii) imposed upon the applicant in the order dated 01/9/2015 passed in Criminal Application (BA) No.407 of 2015 is removed and now the applicant shall be free to enter the territorial jurisdiction of Akot city just like his other co-accused but subject to the condition that he shall not misuse his liberty so given in any manner and shall stay away from the prosecution witnesses.

JUDGE

CERTIFICATE

“I certify that this order uploaded is a true and correct copy of original signed order.”

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